

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

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TRINITY BROADCASTING OF  
FLORIDA, INC.  
GLENDALE BROADCASTING COMPANY

MM Docket No. 93-75

TRINITY CHRISTIAN CENTER OF  
SANTA ANA, INC.  
GLENDALE BROADCASTING COMPANY

MM Docket No. 93-156

TRINITY BROADCASTING OF  
NEW YORK, INC.  
MARAVILLAS BROADCASTING COMPANY

BRCT-940202KE

BPCT-940426KG

NATIONAL MINORITY T.V., INC.  
MARAVILLAS BROADCASTING COMPANY

BRCT-931004KI,  
BTCCT-930921KN  
BPCT-931230KF

TRINITY CHRISTIAN CENTER OF  
SANTA ANA, INC.  
MARAVILLAS BROADCASTING COMPANY  
SIMON T

BRCT-930730KF

BPCT-931028KS  
BPCT-931101LF

To: The Commission

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Date: April 13, 1998

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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of )  
\_\_\_\_\_) )

TRINITY BROADCASTING OF )  
FLORIDA, INC. )

For Renewal of License of )  
Television Station WHFT(TV) )  
Miami, Florida )

MM Docket No. 93-75

\_\_\_\_\_) )  
GLENDALE BROADCASTING COMPANY )

For Construction Permit for )  
New Television Station in )  
Miami, Florida )

\_\_\_\_\_) )  
TRINITY CHRISTIAN CENTER OF )  
SANTA ANA, INC. )

For Renewal of License of )  
Television Station WHSG(TV), )  
Monroe, Georgia )

MM Docket No. 93-156

\_\_\_\_\_) )  
GLENDALE BROADCASTING COMPANY )

For Construction Permit for )  
New Television Station in )  
Monroe, Georgia )

\_\_\_\_\_) )  
TRINITY BROADCASTING OF )  
NEW YORK, INC. )

BRCT-940202KE

For Renewal of License of )  
Television Station WTBY(TV), )  
Poughkeepsie, New York )

\_\_\_\_\_) )  
MARAVILLAS BROADCASTING COMPANY )

BPCT-940426KG

For Construction Permit for )  
New Television Station in )  
Poughkeepsie, New York )  
\_\_\_\_\_) )

NATIONAL MINORITY T.V., INC.	)	BRCT-931004KI
	)	
For Renewal of License of	)	
Television Station KNMT(TV),	)	
Portland, Oregon	)	
	)	
For Pro Forma Transfer of Control	)	BTCCT-930921KN
	)	
MARAVILLAS BROADCASTING COMPANY	)	BPCT-931230KF
	)	
For Construction Permit for	)	
New Television Station in	)	
Portland, Oregon	)	
	)	
TRINITY CHRISTIAN CENTER OF	)	BRCT-930730KF
SANTA ANA, INC.	)	
	)	
For Renewal of License of	)	
Television Station KTBN-TV,	)	
Santa Ana, California	)	
	)	
MARAVILLAS BROADCASTING COMPANY	)	BPCT-931028KS
	)	
For Construction Permit for	)	
New Television Station in	)	
Santa Ana, California	)	
	)	
SIMON T	)	BPCT-931101LF
	)	
For Construction Permit for	)	
New Television Station in	)	
Santa Ana, California	)	
	)	

To: The Commission

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Glendale Broadcasting Company ("Glendale"), Maravillas Broadcasting Company ("Maravillas"), Trinity Broadcasting of Florida, Inc. ("TBF"), Trinity Christian Center of Santa Ana, Inc. ("TBN"), Trinity Broadcasting of New York, Inc. ("TBNY") (TBF, TBN and TBNY are collectively referred to as "Trinity") and National Minority T.V., Inc. ("NMTV"), pursuant to 47 C.F.R.

\$73.3523, jointly request approval of the Settlement Agreement attached as Exhibit 1 (the "Agreement"). Upon occurrence of conditions described below, this would result in dismissal of all five applications of Glendale and Maravillas, and in granting four of the pending renewal applications excepting only the Trinity renewal in Santa Ana, California.

#### Summary

1. The attached Agreement is one of four settlement agreements that are being filed concurrently to resolve half of the comparative renewal proceedings that remain pending at the Commission. Pursuant to the other three agreements, Trinity and NMTV will establish endowments on behalf of three public interest organizations to promote increased opportunities for minorities to participate in ownership, control, management, employment and contracting in media and education.<sup>1</sup> In return, those organizations are requesting dismissal of petitions they have submitted opposing applications filed by Trinity, NMTV, and entities having common principals.

2. Pursuant to the attached Agreement, Glendale and Maravillas are requesting dismissal of mutually exclusive applications they have filed against five pending renewal applications for stations licensed to Trinity or NMTV:

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<sup>1</sup> See the Joint Requests for Approval filed this day on behalf of the League of the United Latin American Citizens ("LULAC"), the Spanish American League Against Discrimination ("SALAD"), the California State Conference of Branches of the NAACP and the Oregon/Washington/Alaska Conference of Branches of the NAACP (collectively "NAACP"), Trinity, and NMTV.

specifically, WHFT(TV), Miami, Florida; WHSG(TV), Monroe, Georgia; WTBY(TV), Poughkeepsie, New York; KNMT(TV), Portland, Oregon; and KTBN-TV, Santa Ana, California. In return, Glendale and Maravillas will be paid the consideration set forth in the Agreement.

3. As a result of the four agreements, all private parties to the Miami, Monroe, Poughkeepsie, and Portland proceedings will have reached agreement on settlement and, subject to Commission approval, those cases, representing half of the eight remaining comparative renewal proceedings, can be concluded. In the Santa Ana proceeding, subject to Commission approval, the conflicts involving one mutually exclusive applicant and two petitioners to deny will have been settled, and a prompt conclusion of that case can also occur.<sup>2</sup>

4. The attached Settlement Agreement and the others filed this day comply with the Communications Act and Commission Rules and policies, and their approval will serve the public interest. The establishment of the public interest endowment funds is decidedly in the public interest. Viacom International, Inc., 12

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<sup>2</sup> Specifically, approval of the instant settlement agreements will reduce the Santa Ana proceeding to Trinity and one mutually exclusive applicant, Simon T. However, on April 9, 1998, Trinity filed a motion to dismiss Simon T's application. Grant of that motion, with approval of the attached settlements, would conclude the Santa Ana proceeding as well, resulting in resolution of five of the eight remaining comparative renewal cases. The joint petitioners emphasize, though, that the instant settlement agreements are not conditioned on the disposition of the motion to dismiss the Simon T application in Santa Ana. Approval of those agreements will conclude the Miami, Monroe, Poughkeepsie, and Portland cases regardless of the action taken on the motion to dismiss.

FCC Rcd 8474, 8479 (¶7) (MMB 1997). The settlement of at least half of the remaining comparative renewal proceedings is also. EZ Communications, Inc., 12 FCC Rcd 3307 (1997). Moreover, the pleadings now before the Commission contain valid justification to authorize Trinity and NMTV to continue the great charitable and spiritual services to the public being provided at their stations.

### **Background**

5. In 1991, Glendale filed construction permit applications that are mutually exclusive with the renewal applications of Trinity in Miami, Florida, and Monroe, Georgia. These applications were the subject of certain hearing proceedings and an Initial Decision in the Miami proceeding was issued by the Presiding Judge in November 1995. Appeals from that Initial Decision are currently pending before the Commission.

6. In 1993 and 1994, Maravillas filed construction permit applications that are mutually exclusive with the renewal application of NMTV in Portland, Oregon, and the renewal applications of Trinity in Poughkeepsie, New York and Santa Ana, California. A mutually exclusive construction permit application in Santa Ana, California was also filed by Simon T, who is not a party to this settlement. These applications have not been designated for hearing.

7. In order to resolve the conflict between all applications of Glendale and Maravillas and the pending renewal

applications with which the Glendale and Maravillas applications are mutually exclusive, the parties have entered into the attached Settlement Agreement. The Agreement provides for dismissal of all five Glendale and Maravillas applications with prejudice, grant of the NMTV renewal application in Portland, Oregon, grant of the Trinity renewal applications in Miami, Florida, Monroe, Georgia and Poughkeepsie, New York, and payments to Glendale and Maravillas by Trinity and a payment to Maravillas by NMTV in excess of the reasonable and prudent expenses incurred by Glendale and Maravillas in preparing, filing and prosecuting their applications. The Agreement is subject to receipt of prior Commission approval, and such approval as well as dismissal and grant of the respective applications, must become a final order as a condition to and effective upon consummation of the Settlement Agreement.

8. Approval of the Agreement requires waiver of Section 73.3523 of the Commission's rules because the settlement payment exceeds the amount permitted by the rule. The settling parties submit that a waiver is warranted because the relevant provisions of Section 73.3523 no longer serve a public interest purpose and should be waived in light of changed conditions, explained in detail below, which have delayed processing of the conflicting applications and which have also rendered Section 73.3523 a nullity. The circumstances here are virtually unique, having counterparts in only three other pending license renewal challenge cases. Accordingly, the requested waiver would not



lead to a flood of other cases seeking to depart from the rule. To the contrary, the circumstances here fall squarely within the Commission's recent policy decision encouraging resolution of the few remaining pending renewal challenge cases by settlement without any historical limitation on the amount of the payment.

9. Thus, the settling parties urge the Commission promptly to waive Section 73.3523, approve the Settlement Agreement and grant the relief requested in the Agreement.

**Approval of the Settlement Agreement complies with  
Section 311(d) of the Communications Act and a waiver  
of FCC Rule Section 73.3523 is justified**

10. Statutory provision. Section 311(d) of the Communications Act, 47 U.S.C. §311(d), governs the Commission's disposition of any settlement agreement proposed by a renewal applicant and its challengers. Section 311(d) provides that the Commission shall approve such an agreement if the agency determines that it meets two requirements: "(A) the agreement is consistent with the public interest, convenience and necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement."

11. FCC regulations. In 1989, after notice and comment rulemaking, the FCC concluded that some parties were filing applications against renewal applicants, not to secure a broadcast license but solely to obtain monetary settlements, and the agency determined that restrictions were needed to curb the

abuses.<sup>3</sup> As a result, the FCC adopted restrictions on the timing and amount of settlement payments. The new rule banned all payments to competing applicants for the withdrawal of an application prior to release of an Initial Decision in a comparative renewal proceeding.<sup>4</sup> The new rule allowed settlement payments after release of an Initial Decision but restricted such payments to reimbursement of the legitimate and prudent expenses incurred by the withdrawing party in filing and litigating its application.<sup>5</sup>

12. More than six years of bona fide litigation without expectation of settlement. In this case, waiver of both the temporal and monetary limits is appropriate and will serve the public interest. The applications of Glendale in 1991, and the subsequent Maravillas applications, were filed after the renewal settlement restrictions in Section 73.3523 had already been adopted (in 1989), and such restrictions of necessity governed their expectations at the time of filing. Since 1991, Glendale, whose principal is also a principal of Maravillas, has spent more than six years in litigation of issues in the Miami, Florida, and Monroe, Georgia, proceedings. This litigation has included motion, discovery, hearing and briefing stages on issues relative to the qualifications of the contending parties and portions of

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<sup>3</sup> Broadcast Renewal Applicants (Abuses of Comparative Renewal Process), 66 RR2d 708, 715 (1989).

<sup>4</sup> 47 C.F.R. §73.3523 (b) (1) .

<sup>5</sup> 47 C.F.R. §73.3523 (c) (1) .

the comparative hearing issues as well. Nonetheless, final adjudication of all of the issues in the Glendale challenges has not yet been reached.

13. Final resolution of proceedings frozen due to circumstances beyond the control of the parties. The parties' appeals from the initial resolution of the qualifications issues by the Presiding Judge in the Miami, Florida proceeding have been filed before the Review Board (prior to its demise) and also before the Commission. However, final adjudication and resolution of the issues in the Miami case, as well as any adjudication and resolution of issues in the other proceedings, has been delayed by developments totally beyond the control of the settling parties. As the Commission acknowledged in waiving the temporal restriction in Section 73.3523(b)(1) for a 90-day period in late 1995, the United States Court of Appeals for the District of Columbia Circuit in 1993 invalidated the integration criterion used by the FCC to select among applicants in comparative proceedings.<sup>6</sup> As a result, the FCC effectively "froze" all comparative cases, halting the pre-designation processing of comparative applications and halting completion of adjudications of previously-designated comparative renewal proceedings while it re-examined its comparative criteria in

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<sup>6</sup> FCC Public Notice, "FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy," 10 FCC Rcd 12182 ("Waiver Public Notice"), discussing Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

light of the Bechtel decision.<sup>7</sup> As the Waiver Public Notice further explained, the United States Supreme Court decision in Adarand Constructors v. Pena, 515 S.Ct. 2097 (1995), also required re-evaluation of the consideration that the FCC gives to race in comparative proceedings, and the FCC said it would "take some time" to assess the effect of this additional development on the agency's comparative criteria.<sup>8</sup>

14. Waiver of ban on any payment where proceedings have not reached the Initial Decision stage. Because of the delay occasioned by Bechtel, the FCC's "freeze" on the processing of comparative applications, and Adarand, none of which applicants such as the settling parties here could have anticipated, the Commission ruled that it was appropriate to waive Section 73.3523(b)(1) and allow monetary settlements of renewal cases in advance of release of an Initial Decision. For the 90-day period following September 15, 1995, the FCC allowed parties who had not yet received an Initial Decision in their cases to dismiss their applications in exchange for reimbursement of the legitimate and prudent expenses they had incurred.<sup>9</sup> The same reasons that justified waiver of the temporal limit in 1995 continue to support such a waiver for the four challenging applications which have not yet proceeded to the issuance of an Initial Decision,

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<sup>7</sup> Public Notice, "FCC Freezes Comparative Proceedings," 9 FCC Rcd 1055 (1994); Public Notice, "Modification of FCC Comparative Proceedings Freeze Policy," 9 FCC Rcd 6689 (1994).

<sup>8</sup> Waiver Public Notice, 10 FCC Rcd at 12182.

<sup>9</sup> Id.

i.e., the Monroe, Georgia, Portland, Oregon, Poughkeepsie, New York and Santa Ana, California challenging applications.

15. Waiver of any limitation on payment, whether before or after an Initial Decision, in view of new statutory prohibition against future renewal challenges. Even more significant changes have taken place since the Bechtel, Adarand and FCC freeze developments leading to the 1995 waiver for a 90-day period. These changes compel waiver of the limit on the amount of the settlement payment to be made for dismissal of applications, whether before or after the release of the Initial Decision. The Telecommunications Act of 1996 added a new Section 309(k) to the Communications Act. This section, 47 U.S.C. §309(k)(4), precludes the consideration of applications filed against an incumbent licensee's renewal application.<sup>10</sup> Thus, the Congress has removed any incentive or opportunity for future challengers to initiate comparative renewal proceedings and rendered Section 73.3523 a nullity.<sup>11</sup> Without any prospective incentive or opportunity to precipitate a comparative renewal hearing, the Commission's rules no longer need to address limits on settlements of the few grandfathered hearings as a means of

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<sup>10</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>11</sup> In adopting the restrictions in Section 73.3523, the FCC, recognizing that challengers had the opportunity, incentive and mechanisms to file non-bona fide applications intended only to secure a monetary pay-off, said that it was addressing the incentives and the mechanisms that helped to give rise to such filings. Broadcast Renewal Applicants, 66 RR2d at 715. Congress has now acted to remove the underlying opportunity.

detering future non-bona fide filings, and enforcement of the rule no longer serves any public interest purpose.

16. FCC policy decision in EZ Communications, Inc. to waive limits on settlements of comparative renewal proceedings antedating the Telecommunications Act of 1996. Following enactment of the Telecommunications Act of 1996, the Commission adopted a policy decision in EZ Communications, p. 5 supra. It approved settlement of a comparative renewal proceeding, which had not reached the point of an Initial Decision, without regard to amounts expended in prosecution of the challenging application. It thus waived Section 73.3523 both with regard to temporal and monetary limitations. Citing the statutory change, the Commission held: "Under special circumstances involving comparative renewal proceedings...we believe that the requested waiver will not undercut the purpose of the rule and that it will further the public interest."<sup>12</sup> The Commission intended this to be a policy statement for other cases, stating: "Other requests involving similar comparative renewal proceedings will be considered under this precedent."<sup>13</sup>

17. Impasse on adoption of valid new comparative criteria for eight grandfathered renewal proceedings of which five are represented by the instant case. To our best knowledge, there are only eight license renewal challenges currently pending before the Commission under the law prior to the Telecommunications

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<sup>12</sup> 12 FCC Rcd at 3308.

<sup>13</sup> Id.

Act of 1996, all of which remain frozen pending resolution of the impasse on comparative hearing factors. Only recently, the Commission initiated its fourth rulemaking effort to obtain comments that might provide the means of resolving the impasse. Reexamination of the Policy Statement on Comparative Broadcast Hearings, GC Docket No. 92-52, released November 26, 1997, slip op. FCC 97-397.<sup>14</sup> Of those eight license renewal challenges, five are those identified in the caption, four of which will be resolved by settlement upon a grant of this joint request. Moreover, approval of this settlement may encourage settlement of the other pending cases, reducing if not eliminating the Commission's docket of previously filed license renewal challenges.<sup>15</sup>

18. Communications Act does not impose limitation on settlements of bona fide applications. Nothing in Section 311(d) of the Communications Act or its legislative history prohibits the Commission from waiving either the timing or the limit on the amount of a monetary settlement if the agency otherwise determines that no party has filed its application for the purpose of obtaining a settlement and that the agreement is consistent with the public interest, convenience and necessity.

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<sup>14</sup> Earlier efforts in the same docket were Notice, Further Notice and Second Further Notice of Proposed Rulemaking at 7 FCC Rcd 2664 (1992), 8 FCC Rcd 5475 (1993) and 9 FCC Rcd 2821 (1994).

<sup>15</sup> The three other pending challenge cases involve television stations in Hartford, Connecticut (BRCT-881201LG/BPCT-831202KF) and Reading, Pennsylvania (BRCT-940407KF/BPCT-940630KF), and an FM station in Glens Falls, New York (MM Docket No. 92-6).

Indeed, in floor debate on Section 311(d), Representative Wirth specifically noted that "the intent of the Congress was not, in any way, to prevent an incumbent licensee from making a payment in excess of expenses to a party challenging that licensee as a means of settling a challenge except when the applicant was not bona fide."<sup>16</sup>

19. Litigation to the issuance of an Initial Decision demonstrates a bona fide application. In adopting Section 73.3523, the FCC stated that it was pegging the permissibility of payment to release of an Initial Decision because perseverance through that point in a proceeding was indicative of good faith:

By banning all settlement payments through the Initial Decision stage, we are further reducing the potential for abuse. First, we are increasing the likelihood that only serious, bona fide applicants will have the opportunity to settle out their competing applications. It is time consuming and expensive to litigate an application through the initial decision stage. Moreover, an applicant that makes it through the Initial Decision stage has demonstrated that it is willing to develop a complete record on all pertinent hearing issues including technical issues, standard comparative issues and any basic qualifications issues designated...For these reasons, we believe that an applicant's prosecution of its application through the Initial Decision stage is a persuasive indication of the bona fides of the application.<sup>17</sup>

Thus, prosecution through the Initial Decision stage is compelling evidence of a bona fide application.

20. All applications pursued within limits of processing freezes. Here, Glendale, whose principal is also a principal of

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<sup>16</sup> 127 Cong. Rec. 18956 (1981).

<sup>17</sup> Broadcast Renewal Applicants, 66 RR2d at 715 (footnote omitted)



Maravillas, has fully litigated a record in the Miami proceeding on all qualifications issues, with regard to both sides, and the record on those issues reached the Initial Decision phase in 1995 with subsequent briefing of that decision on appeal to the Review Board and now to the Commission. Completion of litigation of comparative issues has been frozen since 1994. Glendale and Maravillas have done everything in their power to litigate their applications as far as the processes will permit them to do so. But for the freeze on litigating comparative issues and processing comparative applications, i.e., circumstances beyond the parties' control, these proceedings dating back more than six years to 1991 might very well have reached finality on all issues by this point in time, at least in Initial Decisions if not in appeals as well. In the FCC's explanation quoted above, this further demonstrates the bona fides of Glendale and Maravillas as applicants.<sup>18</sup>

21. FCC's broad authority to approve settlement under the good cause showing here. There is no doubt that the Commission has broad authority under Section 311(d) to decide whether settlement agreements should be approved or disapproved under the public interest, convenience and necessity standard.<sup>19</sup> At the

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<sup>18</sup> Cf. National Broadcasting Co., Inc. (KNBC), 19 RR2d 634 (1970) (despite the FCC's then existing policy of not approving any settlements of comparative renewal cases, approving joint request for settlement in light of changed circumstances occasioned by change in standards announced in a court decision and a new FCC policy statement).

<sup>19</sup> Broadcast Renewal Applicants, 6 RR2d at 717. ("As long as the Commission determines that 'no party to the agreement filed

same time, the FCC has acknowledged that when abuse is not a factor, settlements are to be encouraged as "an efficient way to resolve comparative licensing proceedings, preserve funds for service to the public, and allow...[the] conserv[ation of] unlimited administrative resources."<sup>20</sup> Such settlement of ongoing litigation is to be favored:

Given the facts that law and society both generally favor settlement of competing claims and that requiring an applicant to prosecute its application when it clearly has no interest in doing so would be anomalous, we believe that any detriment stemming from the loss of a choice between applicants is more than offset by the overall benefit to the public interest attributable to the termination of the litigation.<sup>21</sup>

Given the changed circumstances that have occurred since the filing of the Glendale and Maravillas applications, particularly the "freeze" on comparative hearings and on the processing of comparative applications, as well as abolition of future comparative renewal proceedings, this proposed settlement evidences exactly the kind of "good cause" the Commission indicated would need to be presented for it to consider further waivers of the settlement rules.<sup>22</sup>

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its application for the purpose of reaching or carrying out such an agreement,' the Commission has broad authority under Section 311(d) to decide whether settlement agreements should be approved or disapproved under the public interest, convenience, and necessity standard.")

<sup>20</sup> Id. at 716.

<sup>21</sup> Western Connecticut Broadcasting Co., 50 RR2d 1335, 1339 (1982).

<sup>22</sup> Settlements in Comparative Broadcast Proceedings, 2 Com. Reg. 1240, 1243 (1996).

22. Approval of settlement is in the public interest. The bases for granting the Trinity and NMTV renewal applications are delineated in the exceptions they have filed to the Initial Decision in the Miami proceeding, in Trinity's motion to vacate issues designated in that proceeding, and in related reply and other pleadings.<sup>23</sup> Trinity and NMTV have exceptionally strong records for providing public service, non-entertainment programming and outreach missions that address and meet society's greatest needs, including feeding and clothing the homeless, the hungry, and the poor; fighting drugs, crime, suicide, and despair through prevention and with counseling and guidance for the needy; pioneering, before it was ever required by law, extensive outreach programming specifically for children to teach them substantively, spiritually and morally;<sup>24</sup> and much more. The

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<sup>23</sup> Exceptions To Initial Decision, filed by Trinity on January 23, 1996; Consolidated Brief and Exceptions of National Minority T.V., Inc., filed January 23, 1996; Reply To Exceptions, filed by Trinity on February 28, 1996; Motion To Vacate The Record On Improvidently Designated Issues, filed by Trinity on August 20, 1996 ("Motion To Vacate"); Comments of National Minority T.V., Inc. In Support Of Motion To Vacate The Record On Improvidently Designated Issues, filed October 25, 1996; Comments of Intervenor Colby M. May In Response To Mass Media Bureau's Opposition To Motion To Vacate The Record On Improvidently Designated Issues, filed November 15, 1996; Reply To Oppositions, filed by Trinity on December 5, 1996; Reply Comments Of National Minority T.V., Inc. On Oppositions To Motion To Vacate, filed December 5, 1996.

<sup>24</sup> The value of Trinity's moral, spiritual, and educational programming for children is especially evident in light of the recent rash of school shootings. When pundits ask where one can go, what one can do, to prevent such tragedies, Trinity offers a compelling answer.

public interest is overwhelmingly served by the perpetuation of this service, and would be devastated by its demise.

23. The pleadings before the Commission demonstrate that there are ambiguities in the record and that the parties were dealing with complex and changing Commission regulations and policies. The Mass Media Bureau has agreed with Trinity and NMTV that the law concerning minority preferences in low power television applications permitted the structure that counsel recommended.<sup>25</sup> The record on the minority multiple ownership exception contains evidence that counsel's construction was the same as public pronouncements of Commissioners themselves,<sup>26</sup> was the same as the low power rule the Bureau agrees he construed correctly,<sup>27</sup> was consistent with published Commission exposition of the rule,<sup>28</sup> and accompanied discussions with the Commission's staff at which counsel disclosed relevant facts and was considered by the Commission staff member to have been forthright.<sup>29</sup> In these circumstances, grant of the Trinity and NMTV renewal applications is consistent with the public interest.

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<sup>25</sup> Mass Media Bureau's Proposed Findings Of Fact And Conclusions Of Law, filed August 15, 1994, ¶¶ 33, 304, 305; Mass Media Bureau's Consolidated Reply To Exceptions, filed February 28, 1996, ¶¶ 3, 4.

<sup>26</sup> Motion To Vacate, pp. 2-3, 7-8, 36-38; Tab 3, pp. 10, 13.

<sup>27</sup> Id., pp. 18-40.

<sup>28</sup> Id., pp. 8-13, 39; Tab 4, ¶¶ 2, 4, 6, 10.

<sup>29</sup> Id., pp. 5-7, 63-64; Tab 1.

Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995); Roy M. Speer, 3 CR 363 (1996); pleadings cited in n. 23, supra.

24. The alternative is many years of complex future litigation. In the absence of a settlement, oral argument on the pending pleadings has been requested and should be held, since the elimination of the Review Board deprived the parties of that opportunity previously; the decision on qualifications of all parties will then be rendered by the Commission; regardless of the outcome, the decision will be litigated in the courts, with remand proceedings if the agency decision is reversed; and further appeals will ensue until all avenues are exhausted. Moreover, at some point in time, the parties (and the Commission) must deal with the still-frozen comparative issues in all of the pending cases at bar. All of this litigation will continue for many years if the cases are not settled, impacting the time, energies and resources of Trinity and NMTV, which might otherwise be devoted fully to the mission and program operation of their television stations, and impacting the time, energies and resources of the government, which might otherwise be employed in attending to the many major policy issues and administrative duties required of the agency.

25. All of these factors have been reflected in the arms-length settlement of the litigating parties, which should be honored as a preferred means of resolution of the litigation. In this milieu, the terms of the Settlement Agreement, including the proposed settlement amount, have been freely negotiated between

the parties and reflect each party's estimate of the value of settlement to it. As is true in all litigation settlements, each of the parties has weighed the future litigation costs, the drain on the parties' other business and personal activities from sustained multi-year litigation, and the prospects of prevailing/not prevailing in that litigation. This weighing process involves each of the various qualifications issues on either side and the still-unknown nature of the Commission's comparative criteria to be employed. The latter makes this case unique. To the normal uncertainty of the outcome of a lawsuit on the known and established issues under the law of the case, there is the highly abnormal uncertainty of what the comparative law of the case is to become at some time in the future before the litigation can ever be finally concluded. The negotiated payment amount set forth in the Settlement Agreement reflects all of these concerns and is a marketplace decision of the type courts ordinarily respect. E.g., McDermott, Inc. v. Amclyde and River Don Castings, Ltd., 511 U.S. 202, 212 (1994). There is no reason, particularly in light of the changed legal circumstances discussed above, for the FCC to act differently.

26. Conclusion. In litigating and briefing the case before the Presiding Judge and the agency, the parties have advocated their causes, and attacked the causes of their opponents, of course. The objectivity of the Commission's staff is another matter. The record shows that Trinity and NMTV did seek counsel from the agency's administrative and processing staff, and acted

based on discussions with the staff as well as in reliance on certain public statements by the agency Chairman and Commissioners.

27. Add to this that, after more than six years of litigation, the parties and the Commission must reasonably expect many future years of litigation, probably another six, maybe even more, before the cases here under consideration, play out to their ultimate conclusions.

28. Add to the foregoing that, in order for the litigation to be concluded, the Commission must fix its comparative criteria as applied to license renewal challenges, which some have argued cannot be done in a manner which will survive court review. While approval of the instant settlement will not totally resolve that problem, resolution of four of the eight remaining cases is a huge step in that direction.

29. Add to the foregoing, that broadcast comparative renewal proceedings are no longer a part of the nation's future regulatory communications scheme, for which refusal to approve settlements was a desirable tool to deter non-bona fide applications. Now, precisely to the contrary, as the Commission recognized in EZ Communications, Inc., settlements have become a desirable tool, serving the public interest, to clear out the small remaining backlog of cases governed by prior law.

30. And, finally, add to the foregoing, that settlement will be fair to all of the parties -- to the challenging applicants who filed and prosecuted their applications under the

law dating back to the beginnings of the Commission itself, which honored bona fide renewal challenges as a part of the regulatory scheme -- and to the renewal applicants who thoroughly defended their actions in question as bona fide and have established an overall licensee record of an unparalleled national and worldwide television broadcast ministry.

**Supporting declarations**

31. Attached as Exhibits 2-5 are declarations of George F. Gardner, President of Glendale, James C. Gates, President of Maravillas, Terrence M. Hickey, Assistant Secretary of Trinity, and Jane Duff, President of NMTV. The declarations of Messrs. Gardner and Gates attest that their applications were not filed for the purpose of reaching or carrying out an agreement regarding the dismissal or withdrawal of their applications and that the Settlement Agreement constitutes the complete agreement between the parties. The declarations of Mr. Hickey and Ms. Duff attest that the Settlement Agreement represents the complete agreement between the parties.

32. For the reasons set forth above, and on the basis of the declarations attached, Glendale, Maravillas, Trinity and NMTV respectfully request that the Commission approve this Settlement Agreement, concurrently dismiss the applications of Glendale and Maravillas, and concurrently grant the renewal application of



NMTV in Portland, Oregon, and the renewal applications of Trinity in Miami, Florida, Monroe, Georgia, and Poughkeepsie, New York.

Respectfully submitted,

**Trinity Broadcasting of Florida, Inc.**

**Trinity Christian Center  
of Santa Ana, Inc.**

**Trinity Broadcasting of New York, Inc.**

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